Supreme Court, U.S.
FILED

NO 05-688 NOV 21 2005

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT BROMLEY

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent

On Petition for Writ of Certiorari to the Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Are the Pennsylvania Sentencing Guidelines a violation of the protections conferred by the Sixth Amendment to the United States Constitution, as interpreted by ***United States v. Booker***, 125 S. Ct. 738 (2005).

LIST OF PARTIES

The names of all parties to the proceeding in the court for whose judgment review is sought here appear in the caption of the case.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED II

LIST OF PARTIES III

TABLE OF CITATIONS IV

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 3

CONSTITUTIONAL PROVISION INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 16

APPENDICES

Appendix A - Opinion and Order of the Superior Court of Pennsylvania, dated October 29, 2004. ..... 1a

Appendix B – Opinion in Support of Order of the Court of Common Pleas of the Sixth Judicial District of Pennsylvania, dated December 18, 2000. ..... 15a

TABLE OF CITATIONS

Cases Cited: *Page*

Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).....9, 12, 13, 14

Blakely v. Washington, 124 S. Ct. 2531, 2540 (2004)***..10, 12, 15***

Commonwealth v. Arent, 508 A.2d 596 (Pa. Super. 1986).....*11*

Commonwealth v. Bromley, 862 A.2d 598, 603 (Pa. Super. 2004) *15*

Commonwealth v. Devers, 546 A.2d 12 (Pa. Super. 1988) *11*

Commonwealth v. Drumgoole, 491 A.2d 1352 (Pa. Super. 1985) *12*

Commonwealth v. Easterling, 509 A.2d 345 (Pa. Super. 1986) *12*

Commonwealth v. Eby, 784 A.2d 204 (Pa. Super. 2001).....*11*

Commonwealth v. Ennis, 574 A.2d 1116 (Pa. Super. 1990)...*11*

Commonwealth v. Gause, 659 A.2d 1017 (Pa. Super. 1995) .*11*

Commonwealth v. Martin, 351 A.2d 650 (Pa. 1976) *11*

Commonwealth v. Reid, 867 A.2d 1280 (Pa. Super. 2005) *13*

Commonwealth v. Smith, 863 A.2d 1172, 1177 - 78 (Pa. Super. 2004).....*10*

United States v. Booker, 125 S. Ct. 738 (2005)..8, 12, 13, 14, 15

Statutes Cited:

42 Pa.C.S. § 9701 *et seq*. 9

42 Pa.C.S. § 9712 9

42 Pa.C.S. § 9713 9

42 Pa.C.S. § 9717 9

42 Pa.C.S. § 9718 9

42 Pa.C.S. § 9719. 9

42 Pa.C.S. § 9721 10

42 Pa.C.S. § 9781 11

Regulations Cited:

204 Pa. Code § 303.1 et seq. 10

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PETITION FOR A WRIT OF CERTIORARI

Joseph P. Burt, an Assistant Public Defender on the staff of the Erie County Pennsylvania Office of the Public Defender, on behalf of Robert L. Bromley, respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of Pennsylvania in this case.

OPINIONS BELOW

The Pennsylvania Supreme Court, Western District, issued an Order dated August 23, 2005, at 25 WAL 2005, 881 A.2d 818, which denied Petitioner's Petition for Allowance

of Appeal. The Pennsylvania Superior Court, Western District, filed an Opinion and Order dated October 29, 2004, 19[illegible]DA 2004, 862 A.2d 598 (Pa. Super. Ct. 2004), which affirmed the lower court's Order of sentence. Said Opinion and Order is reproduced herein at Appendix A. The Court of Common Pleas for the Sixth Judicial District of Pennsylvania, issued an Opinion In Support of its January 5, 2004, Order of sentence pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), which requires the filing of a Statement of Matters Complained of on Appeal. Said Opinion is reproduced herein at Appendix B.

STATEMENT OF JURISDICTION

Jurisdiction is conferred upon this Court pursuant to Supreme Court Rule 10(c), 28 U.S.C. § 1257. On August 23, 2005, the Supreme Court of Pennsylvania denied Petitioner Robert Bromley's Petition for Allowance of Appeal, thereby leaving extant the Opinion and Order of the Superior Court of Pennsylvania of October 29, 2004. The decision of the Superior Court decided an important federal question in a way that conflicts with relevant decisions of this Court. This Petition has been filed within 90 days of the Order of the Pennsylvania Supreme Court.

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part : "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

STATEMENT OF THE CASE

On November 4, 2003, Appellant pled guilty to one count of Possession With the Intent to Deliver Marijuana. The charge stems from Appellant delivering 2.0 grams of

marijuana to a confidential informant in Corry, Pennsylvania.

On January 5, 2004, Appellant was sentenced to fifteen (15) months to sixty (60) months incarceration. On January 21, 2004, Appellant filed a Motion to Reduce Sentence, which was denied by Order of the same date. A timely Notice of Appeal was filed.

As reflected in the Memorandum Opinion, the trial-level Judge relied on the following to support his aggravated range choice:

> Appellant has an extensive history of criminal activity, including substance abuse offenses dating back to 1988. Appellant was convicted herein for being in possession with the intent to deliver 2.0 grams of marijuana. This Court explained the reasoning for Appellant's sentence being in the aggravated range in Appellant's presence. The record reflects:
>
> > THE COURT: I read the presentence report in its entirety. I have also read the guidelines, listened to what has been presented here today, and I have a number of concerns, Mr. Bromley. I accept your representation you feel you have a drug problem. I accept your lawyer's representation that that may explain some of your other criminal behavior, but what I can't accept is your continued

unabated criminal behavior. It is just an incredible array of offenses since 1988, which include alcohol-related offenses.

ROBERT BROMLEY: Yeah, I used to be an alcoholic.

THE COURT: I don't know that anybody used to be an alcoholic.

ROBERT BROMLEY: Well, I don't drink no more.

THE COURT: You have a host of underage drinking convictions, you have property offenses, you have prior drug convictions, you have crimes of violence in your past. And you have been given every form of sanction from probation to fines and costs to time in Erie County Jail to time in county and state prison, and nothing really has stopped you. You just continue to commit crimes. There is only one conclusion I can draw from this history, is that unless you are incarcerated you are going to continue to commit crimes.

I note in the presentence report also this offense occurred in October of 2002. Since that time you have been arrested and bound over to court on similar type charges involving marijuana and possession with intent to deliver. I recognize you are presumed innocent of those offenses at this time, but at least as a judicial matter there's been found to be a prima facie case of those charges, which is not promising given your history.

So perhaps for your own good, because on your own you can't stop committing crimes, and for the protection of the community I have to impose a period of incarceration. I am going to do so in the aggravated range only to hold you accountable and get the message to you that you cannot continue to do what you have been doing. I am also going to authorize drug and alcohol treatment for you so that maybe you can use this opportunity differently than you have in your past stints in jail.